

## CHAPTER 2

# DESIGNATING THE RECORD

After filing the Notice of Appeal, the appellant needs to designate the record. That means picking out which parts of the record you want the justices to see when they are reviewing your case and deciding your appeal. The **record** in an appeal is the official account of what went on at the hearing or trial that is being appealed. A party designates the record by listing what items to include in a *Notice Designating Record on Appeal* ([Sample Form F](#)). This notice must be served and filed at the superior court within 10 days of the filing of the *Notice of Appeal* (CRC rules 8.120(a), 8.124(a), 8.128(a), 8.130(a), 8.134). A record is required in every case. Because the short time period between the filing of the Notice of Appeal and the *Notice Designating Record on Appeal*, **appellants often file both documents at the same time**. However, the Court does not require that they be filed simultaneously.

The record may consist of two parts:

1. A clerk's transcript (CRC rule 8.120), and
2. A reporter's transcript (CRC rule 8.130).

The **clerk's transcript** can include anything that is in the superior court file—the papers that were filed, the orders that were made, the things that were done. A clerk's transcript is prepared by the superior court based on what you listed in the Notice Designating the Record on Appeal. Or instead of having the superior court prepare a clerk's transcript, you or you and the opposing party may prepare and file a CRC rule 8.124 appendix (discussed later). But either a clerk's transcript or a CRC rule 8.124 appendix is required in all cases.

The **reporter's transcript** is a word-for-word record of everything that was said in court during the hearings or trial. It is taken down by a certified court reporter, who then types it out (transcribes it) for the appeal. A reporter's transcript is optional, and you are not required to include a transcript of the entire trial or every hearing.

With very few exceptions, the appellant must pay the fees for the preparation of both the clerk's transcript (unless they elect to produce an 8.124 appendix) and the reporter's transcript.

When you file the *Notice Designating Record on Appeal*, you will need to make a decision about what type of record you would like. There are four options

spelled out on the first page of the designation form. You must choose one (see [Sample Form F](#)):

1. 8.124 Appendix only; no Reporter's Transcript,
2. 8.124 Appendix and Reporter's Transcript,
3. Clerk's Transcript only; no Reporter's Transcript, and
4. Clerk's Transcript and Reporter's Transcript.

The record is an extremely important part of an appeal. Think of the record as a package that contains all of the information that the justices might need to know about what happened in the trial court in order to review the case. You can only put into the package those items (filings, transcripts, orders, motions, minutes, etc.) that were part of the trial court proceedings. Furthermore, when writing your brief and conducting oral argument, you can only refer to parts of the trial court proceedings that are included in the package. The contents of the record limit the scope of issues and information that the parties can use in their arguments and that the Court of Appeal will consider as it reviews the case. Anything in the record can be examined and considered. For the purpose of appellate review, any parts of the superior court trial that are not included in the record *do not exist*, will not be examined or considered by the Court, and cannot be used by either party to support their case.

What you choose to include will depend on the issues that you are appealing. The appellant needs to think about the trial, what rulings may have been legally wrong, and what part of the record will best tell the Court of Appeal why these rulings were legally wrong. These are the items the appellant should put into the package and designate for the record.

The following section will tell you how to designate the record.

## **Preparing the Clerk's Transcript/CRC Rule 8.124 Appendix**

In all appeals, the Court requires either a clerk's transcript or a Rule 8.124 appendix. These contain the same material and serve the same purpose: to provide the court with the procedural history of the hearing or trial that is being appealed. Both are "books" that contain the papers that were filed in the trial court in chronological order. The major difference between the two is that the clerk's transcript is prepared by the superior court while the 8.124 appendix is either prepared jointly by the appellant and respondent or by either of the parties individually. Additionally, the appellant must pay for the preparation of the clerk's

transcript; the only cost associated with preparing an 8.124 appendix is the expense of photocopying and binding the relevant documents. With these differences in mind, the clerk's transcript and 8.124 appendix will be discussed separately.

## **Clerk's Transcript**

In order to have the clerk's transcript prepared, the appellant must properly complete pages 1 and 2 of the *Notice Designating Record on Appeal*. This involves checking a box on page 1 indicating that the appellant would like to proceed with a clerk's transcript, and then, on page 2, listing all of the documents that the appellant would like included in the clerk's transcript ([Sample Form F](#)). Within 10 days of the filing of the Notice of Appeal, the appellant must serve and file the completed *Notice Designating Record on Appeal* at the superior court. The superior court, not the Court of Appeal, prepares the record.

The clerk's transcript automatically includes (CRC rule 8.120(b)):

- The Notice of Appeal,
- The judgment or order being appealed and any notice of entry,
- Any notice of intention to move for new trial, to vacate the judgment, for judgment notwithstanding the verdict, or for motion for reconsideration,
- Any notices or stipulations to prepare the clerk's or reporter's transcripts or to proceed by agreed or settled statement, and
- The register of actions, if any.

You must specifically designate any other document you want included. Ordinarily this means you will have to go to the clerk's office at the superior court to look at the entire file for your case. That's the only way you will be able to pick the documents you want to include in the clerk's transcript and also know the names of those documents, the dates they were filed, etc. To designate a document, list the date of the filing or lodging of a document and its exact title. If the date on which the document was filed is unknown, use the date the document was signed. The appellant does not have to individually designate each jury instruction or minute order. You can list "all" jury instructions and "all" minutes.

All exhibits, whether admitted into evidence or refused, are considered part of the clerk's transcript. If some or all of the exhibits are needed in the appeal, the ones to be used are designated, and most often transmitted to the court under CRC rule 8.224, after the respondent's brief is filed. However, if a party wants one or more of the exhibits copied and put in the clerk's transcript to be available while the briefs are being written, the exhibits to be included must be noted by number or letter in the *Notice Designating Record on Appeal*.

Within 10 days after service of appellant's designation, the respondent may provide a list of additional items to be included in the clerk's transcript. (CRC rule 8.120(a)(3).) This list must also be specific as to the title of each document and the date it was filed.

## **Clerk's Fees**

After the respondent's designation is filed, or the time to file has passed, the superior court appeals clerk locates the documents that have been designated and determines the cost of preparing the clerk's transcript. The cost of a clerk's transcript depends on how many pages there are. The superior court charges a copying fee based on the number of pages designated, and a volume fee based on the number of volumes in the clerk's transcript. The superior court appeals clerk then notifies the parties of the estimated cost of the clerk's transcript and, upon payment by the appellant, begins to prepare it. Unless the court waives appellant's \$100 deposit (which was paid at the time of the filing of the Notice of Appeal), that money is put toward the cost of the clerk's transcript. If the total cost is more than \$100, the superior court sends a notice of the remaining amount that is due. A person who is unable to pay for the clerk's transcript can file with the superior court an application for a waiver of the clerk's transcript fees. (CRC rule 8.120(c).) [\(Sample Forms D and E.\)](#) **The appellant pays the entire cost for preparation of the original clerk's transcript and one copy, even when the respondent has designated items to be included.**

The respondent does not automatically get a copy of the record. If he or she wants a copy of the clerk's and/or reporter's transcript, the request must be made promptly. The superior court appeals clerk will provide the respondent with an estimate of the cost to prepare the clerk's transcript. (CRC rule 8.120(c).) The respondent has 10 days to pay.

If the respondent does not wish to have to pay for his or her own copy, he or she may borrow the appellant's copy after notifying the appellant no more than 20 days after the record is filed in the Court of Appeal. The record is lent to the respondent when the appellant's opening brief is served, and returned to appellant when the respondent's brief is served. (CRC rule 8.150(b).)

If fees are not paid, the superior court sends a *Notice of Default* telling the appellant to pay within 15 days or the appeal may be dismissed. (CRC rule 8.140(a).) If the fees are not paid within 15 days after that *Notice of Default* is sent, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. The Court of Appeal then dismisses the appeal.

Once the designation has been made and the fees paid, the appeals division of the superior court will prepare the clerk's transcript. The papers you designated on your *Notice Designating Record on Appeal* are arranged chronologically in the

order in which they were filed in the superior court, beginning with the first papers filed in the case and ending with the last papers filed in the case. After the papers are arranged in order, they are numbered in sequence. The clerk prepares two indexes and inserts them at the beginning of the transcript. One index lists the papers in the order they were filed, and the second index lists the papers in alphabetical order by the first letter of the first word in the title of the document. Each index includes the page numbers and, if there is more than one volume, the volume number where the papers can be found in the transcript. A cover is prepared, and everything is then bound in book form.

Within 30 days after the appellant deposits money for costs or the court files an order waiving costs, the clerk's transcript should be ready. The superior court clerk should then send a copy of the transcript to the Court of Appeal and the appellant. But in practice, the clerk usually sends a copy to the court and notifies the parties that the clerk's transcripts and the reporter's transcripts (if requested) are complete. The notice tells the appellant and any other party who paid for a copy of the record to pick up their transcripts from the clerk's office. (CRC rules 8.120(d), 8.150(a).)

### **8.124 Appendix**

Any party may elect to proceed by an appendix. In order to proceed by an 8.124 **appendix**, within 10 days of filing the Notice of Appeal, the appellant must serve and file his or her intention to proceed under CRC rule 8.124, along with a Proof of Service on all parties. The appellant gives notice of his or her intention by checking a box on the first page of the *Notice Designating Record on Appeal* form ([Sample Form F](#)).

For detailed directions on how to construct an 8.124 appendix, see [Appendix 6](#) of this manual.

If the appellant opts for a clerk's transcript, but the respondent would prefer a 8.124 appendix, the respondent may file an election to proceed with an appendix within 10 days of the filing of the notice of appeal and, if timely, this election will govern the record preparation, and the parties must proceed with an appendix. However, if the appellant would prefer a clerk's transcript, the appellant must challenge the election of an 8.124 appendix by filing a written motion in superior court. The motion must be filed within 10 days after the *Notice Designating Record on Appeal* is served and filed. (CRC rule 8.124(a)(1).)

If the parties ultimately decide to proceed by appendix, two different scenarios can occur – a joint appendix or a separate appendix from each party.

The simplest and most desirable is if the two parties agree to file a **joint appendix**. This means that the parties cooperate together to produce and jointly

file one appendix that follows the rules laid out in CRC rule 8.124(b) and contains all of the documents necessary for the case. The Court prefers this type of appendix.

If the parties cannot cooperate to create an appendix, each side must prepare their own appendix, meaning the appellant files an **appellant's appendix**, the respondent files a **respondent's appendix**, and if necessary, the appellant files an **appellant's reply appendix**. In either case, the joint or appellant's appendix must be served on the respondent(s) and filed with the court at the same time as the appellant's opening brief. A respondent's appendix, if any, must be served on the appellants and filed with the court at the same time as the respondent's brief. An appellant's reply appendix, if any, must be served on the respondent and filed with the court at the same time as the appellant's reply brief. For information on the timing for the filing of the briefs, see [Chapter 4](#).

In filing an appendix you are certifying that the papers included are true and that correct copies of the documents are filed or lodged with the superior court. (CRC rule 8.124(d), (g).)

All exhibits admitted in evidence or rejected are considered as part of the appendix even if they are not physically included in the bound volumes. (CRC rule 8.124(b).) They can later be lodged with the Court of Appeal by transmitting them under CRC rule 8.224.

From a financial perspective, the advantage of an appendix is that it only costs the appellant or both parties the expense and time of photocopying the relevant documents and binding.

## Reporter's Transcript

The reporter's transcript is a word-for-word typewritten record of everything that was said in court during the trial or hearing. It is an optional part of the record on appeal. The appellant should consider requesting a reporter's transcript if what was said at the trial or hearing relates to the issues the appellant wants to talk about on appeal. If what was said at the trial or hearing has nothing to do with the issues for the appeal and the appellant does not want it typed up, the appellant does not need to request a reporter's transcript. **If you choose to go on without a reporter's transcript, be sure that you will not need any part of it to make your case. Without the reporter's transcript, you will not be able to refer to or use anything that was said during the trial to support your argument.**

As discussed in the section on the clerk's transcript, within 10 days of the filing of the Notice of Appeal, you must serve and file a *Notice Designating Record on Appeal* ([Sample Form F](#)) with the appeals section of the superior court.



On page 1, the appellant must indicate whether he or she wants a reporter's transcript by checking the proper box. *If the appellant does not ask for a reporter's transcript, the respondent may not ask for one, either.* (CRC rule 8.130(a).)

If you choose to proceed without a reporter's transcript, you can skip the rest of this section.

If you do elect to have a reporter's transcript prepared, you must make a list of each day that is to be typed up (transcribed). The list must include the date, the reporter's name, department (that the trial or hearing was in that day), and the nature of the proceedings. This information can be found in the minutes located in the superior court file. Page 3 of the form *Notice Designating Record on Appeal* ([Sample Form F](#)) may be used for this purpose. This list must be filed with the superior court. If only a portion of a witness's testimony is needed, the opposing parties (respondent(s)) must agree, or stipulate to that, and the stipulation must be filed with the superior court.<sup>5</sup> If you choose to include this limited part of a witness's testimony, you must set out the issues that you intend to raise on appeal. (CRC rule 8.130(a)(5), 8.130(a), (e).)

## **Reporter's Fees**

At the same time that the *Notice Designating Record on Appeal* is filed, the appellant must also include a deposit for reporter's fees. The cost of the reporter's transcript depends on how many days or hours the reporter is asked to transcribe. Reporter's transcripts are expensive. You can ask the reporter for an estimate in advance or, you may calculate the deposit yourself. The rate is \$650 per day for each day in which there were more than three hours of proceedings, and \$325 per day for each day in which there were less than three hours of proceedings. For example, a transcript with 4 days with more than three hours of proceedings and 2 days with less than three hours of proceedings would cost \$3250 (\$650x4 +\$325x2=\$3250).

If the appellant does not have sufficient funds to cover the deposit, there are a few options. First, the appellant can ask for a waiver of deposit from the reporter(s) themselves. Please note that a waiver of deposit is merely that. It waives only the need for the deposit, not the cost of the reporter's transcript. This means

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<sup>4</sup> A stipulation is a written agreement between the parties about something they are going to do. In this context, it is an agreement that only parts of the testimony will be considered in the appeal. It is signed by all counsel and self-represented parties. If you want or need a stipulation, call or write counsel or a self-represented party and ask whether he or she is willing to agree to what you propose. If he or she is agreeable, prepare a written statement that "The parties agree (stipulate) to. . . ." setting out what has been agreed to. Add a separate signature line for each counsel or self-represented party to sign, with the person's name typed under the signature line and a place for the date on which the document was signed.

the appellant will need to pay the reporter's fees sometime in the future. If the reporter(s) grants the waiver, the appellant must provide a copy of the waiver at the time the appellant files the *Notice Designating Record on Appeal*.

**The Court of Appeal has the power only to waive its own filing fee of \$655 and cannot waive the reporter's fees.**

If the appellant has already had some or all of the proceedings transcribed, a certified copy of that transcript can be substituted for the reporter's transcript and the deposit is not necessary. The transcript(s) must comply with CRC rule 8.144. The appellant should be sure to keep a copy of this transcript for writing the brief.

The *Notice Designating Record on Appeal* must be filed with either a money deposit for the cost of the transcript, a signed waiver of deposit, or a certified copy of the transcript.

If, after being served with the appellant's *Notice Designating Record on Appeal*, the respondent wishes to designate additional parts of the transcript, a respondent's designation or *Notice Designating Record on Appeal* must be served and filed with the superior court within 10 days of the service of the appellant's designation. (CRC rule 8.130(a).)

After the time limit for the respondent to designate additional items has passed, it generally takes 30 to 60 days for the transcript to be completed. The Court of Appeal may grant extensions of time for the reporter if he or she is unable to complete the transcript on time. (CRC rule 8.130(f).)

## Record Problems

If you fail to properly designate the record by not filing a *Notice Designating Record on Appeal* or if you have not paid the costs of the clerk's and/or reporter's transcript, or if you have failed to correct the designation of the record after notice was sent to you by the superior court, you will be sent a *Notice of Default*. A party has 15 days from the date of the notice to cure the problem. If the problems to be fixed are still not cured after the 15 days, the superior court sends a *Notice of Failure to Clear Default* to all parties and to the Court of Appeal. If the appellant is the party who has not complied with the rules, the Court of Appeal may dismiss the appeal; if the respondent is the party that has not complied on time, the appeal may go forward on the appellant's record alone. (CRC rule 8.140(b).)

If either party discovers that something is missing from the record after the record has been filed, there are ways to fix the problem. If the clerk or reporter left out a required or requested item, a *Notice of Correction* must be filed in the superior court and served on all parties. (CRC rule 8.155(b).) If the item was not



listed in the designation of record, a motion to augment will be needed. (See [Chapter 6](#).)

When filing the *Designation of the Record on Appeal* in Los Angeles County, the Court strongly suggests that you make those filings at the appeals section of the Superior Court, Room #111, at 111 North Hill Street, in Los Angeles. However, the court will accept the *Designation of the Record on Appeal* at any superior court clerk's office. Information on the various superior court locations in Second District can be found in [Appendix 3](#).

# Sample Form C

## PROOF OF SERVICE BY MAIL INSTRUCTIONS FOR SUPERIOR COURT OR COURT OF APPEAL

Each document you prepare must be served on all counsel and self-represented parties in your case. The document must be served by mail or hand-delivered by someone who is over the age of 18, not a party to the appeal, and a resident of the county where the mailing or delivery occurred.

This sample form is for service by mail, which is the easiest and most common method of service. If you wish to have the document delivered in person instead of mailed, you may adapt this sample form by replacing line 3 with language indicating the name of the person(s) to whom the document was delivered, the date and time of delivery, and the address where the delivery occurred. (For sample language for a hand-delivery, see page 4, line 3b of [Sample Form F](#).)

All documents must be served on all attorneys of record and any self-represented parties. **If the document is a brief, you must also serve one copy on the Superior Court and five copies on the California Supreme Court. If the document is a brief or petition, you must serve one copy on any public officer or agency required to be served by CRC rule 8.29.**

### **How to serve a document:**

Make a copy of your document for each person or entity you must serve and enough copies for filing with the Court of Appeal. The person doing the mailing must complete the Proof of Service and attach an unsigned copy to each copy of the document being served. The person doing the service should mail a copy of the document to each person listed in the Proof of Service by depositing it in the United States mail with postage fully prepaid. The envelopes may be deposited in a United States post office or mailbox. The original document cannot be filed with the court until service has been completed by mailing the copies. After the envelopes have been deposited into the mail, the original Proof of Service should be signed and attached to the original document for filing.

### **Filling out the Proof of Service form:**

Fill out the case name, Court of Appeal case number, and Superior Court case number. If you are filing the document in the Superior Court, use the Superior Court case name. If you are filing in the Court of Appeal, use the Court of Appeal case name.

Fill out the name of the non-party over the age of 18 who will be doing the mailing.

On line 2, specify the residential or business address of the person doing the mailing, and check the appropriate line for residence or business.

On line 3, specify the date of the mailing, the name of the document being served (for example, "Appellant's Opening Brief"), and the place where the mailing took place. List the full names and addresses of all the parties or their attorneys to whom the documents are being mailed. If the

# Sample Form C

document is a brief, you must also serve the Superior Court, the California Supreme Court (5 copies). If the document is a brief or petition, you must serve any public officer or agency who must be served under CRC rule 8.29. These addresses must also be listed on the Proof of Service.

Date the Proof of Service, type or print the name of the person doing the mailing, and include the signature of the person doing the mailing.

**An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties.**

# Sample Form C

## PROOF OF SERVICE BY MAIL

CASE NAME: \_\_\_\_\_  
COURT OF APPEAL CASE NUMBER: \_\_\_\_\_  
SUPERIOR COURT CASE NUMBER: \_\_\_\_\_

I, \_\_\_\_\_ (*specify name of person doing service*), declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a resident or employed in the county where the within-mentioned service occurred.

2. My residence or business address is (*specify*):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ residence \_\_\_\_\_ business

3. On \_\_\_\_\_ (*specify date*), I served the \_\_\_\_\_ (*specify document*) by United States mail as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and I deposited each sealed envelope with the United States Postal Service in \_\_\_\_\_, California, for delivery as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(*List addresses and send 1 copy to each party*)

California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102  
(*5 copies of briefs only*)

\_\_\_\_\_ Superior Court  
\_\_\_\_\_  
\_\_\_\_\_  
(*List address of Superior Court and serve 1 copy of briefs only*)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(*List address of any public officer or agency required to be served by CRC rule 8.29 and serve 1 copy of briefs only.*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(*TYPE OR PRINT NAME*)

\_\_\_\_\_  
(*SIGNATURE OF DECLARANT*)

# Sample Form D

## APPLICATION FOR WAIVER OF COURT FEES AND COSTS - INSTRUCTIONS

When you file your notice of appeal, there is a filing fee of \$655.00 which is due at the time of filing. A deposit of \$100.00 needs to be paid to the Superior Court if you want it to prepare a clerk's transcript for you. If you feel you cannot afford these fees, you may fill out an Application for Waiver of Court Fees and Costs. Generally, you would file the application in the Superior Court when you file your notice of appeal. If you did not file the application in Superior Court you may file it in the Court of Appeal. Submit the application to the court along with the Order on Application for Waiver of Court Fees and Costs ([Sample Form E](#)).

The Application for Waiver of Court Fees and Costs form and the Information Sheet on Waiver of Court Fees and Costs are available online in Adobe Acrobat PDF format and the form may be filled out electronically for free at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>. Select "General Legal" forms, then click on Form FW-001 for the form or Form FW-001-INFO for the information sheet.

### Filling out the Application for Waiver of Court Fees and Costs form:

#### Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the next box down, specify the Superior Court, address, and branch name of the court that made the order or judgment you are appealing.
- (3) In the "CASE NUMBER:" next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the Superior Court case caption.
- (4) In the box immediately to the right of the preprinted caption "APPLICATION FOR WAIVER OF COURT FEES AND COSTS", write the Superior Court case number for your case, and the Court of Appeal number if you have one.

#### Entries

- Entry 1. Check box "a" if you can't pay any of the court fees or costs. Check box "b" if you can pay part of the court fees or costs, and then write down what you can pay.
- Entry 2. Write your street address, city, state, zip code and telephone number where you can be reached during the day.
- Entry 3. Write your occupation, employer and employer's address. If you do not have a job, write "unemployed". If you have a spouse and your spouse has a job, write your spouse's occupation, employer and employer's address. If your spouse does not have a job, write "unemployed".

# Sample Form D

Entry 4. Check the box if you are receiving financial assistance, then check the box or boxes next to the type of assistance you are receiving.

Entry 5. If you checked box 4 you have to fill out one of three boxes in entry 5. Check only one box. If you check box "a" you must write your Medi-Cal number. If you check box "b" you must write your Social Security number and your birth date. If you check box "c" you need to attach verification documents which are listed on the Information Sheet on Waiver of Court Fees and Costs. After you have checked one of these boxes, you are done. Go to the bottom of the form and date and sign it, you do not need to fill out anything else.

Entry 6. If you did not check box 4, you must complete entry 6. Check the box next to question 6 if your gross monthly income is less than the amount shown on the Information Sheet on Waiver of Court Fees and Costs accompanying the form. If you check this box, skip entry 7, fill out entries 8, 9a, 9d, 9f, and 9g on page two of the form, then date the form and fill out your name and signature on the bottom of page one.

Entry 7. If you did not check box 4 or box 6, you must complete entry 7. Check this box if your income is not enough to pay for the common necessities of life for yourself and your family and still pay court fees and costs. If you check this box, you have to complete page two of the form in its entirety, then date and sign the bottom.

At the bottom of page 1, write the current date, type or print your name legibly, and sign the form.



**INFORMATION SHEET ON WAIVER  
OF COURT FEES AND COSTS  
(California Rules of Court, rules 3.50–3.63)**

**FW-001-INFO**

If you have been sued or if you wish to sue someone, and if you cannot afford to pay court fees and costs, you may not have to pay them if:

1. You are receiving **financial assistance** under one or more of the following programs:

- SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
- CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families, formerly AFDC, Aid to Families with Dependent Children Program)
- The Food Stamp Program
- County Relief, General Relief (G.R.), or General Assistance (G.A.)

If you are claiming eligibility for a waiver of court fees and costs because you receive financial assistance under one or more of these programs, and you did not provide your Medi-Cal number or your social security number and birthdate, you must produce documentation confirming benefits from a public assistance agency or one of the following documents, unless you are a defendant in an unlawful detainer action:

PROGRAM	VERIFICATION
SSI/SSP	Medi-Cal Card or Notice of Planned Action or SSI Computer-Generated Printout or Bank Statement Showing SSI Deposit or “Passport to Services”
CalWORKs/TANF (formerly known as AFDC)	Medi-Cal Card or Notice of Action or Income and Eligibility Verification Form or Monthly Reporting Form or Electronic Benefit Transfer Card or “Passport to Services”
Food Stamp Program	Notice of Action or Food Stamp ID Card or “Passport to Services”
General Relief/General Assistance	Notice of Action or Copy of Check Stub or County Voucher

–OR–

2. Your total gross **monthly household income** is less than the following amounts:

NUMBER IN FAMILY	FAMILY INCOME
1	\$ 1,020.83
2	1,375.00
3	1,729.16
4	2,083.33
5	2,437.50

NUMBER IN FAMILY	FAMILY INCOME
6	\$ 2,791.66
7	3,145.83
8	3,500.00
Each additional	354.16

–OR–

3. Your income is not enough to pay for the common **necessaries** of life for yourself and the people you support and also pay court fees and costs.

**To apply, fill out the Application for Waiver of Court Fees and Costs (form FW-001) available from the clerk’s office. If you claim no income, you may be required to file a declaration under penalty of perjury. Prison and jail inmates may be required to pay up to the full amount of the filing fee.**

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal services office, or lawyer referral service in your county (listed in the Yellow Pages under “Attorneys”).

If you are asking for review of the decision of an administrative body under Code of Civil Procedure section 1094.5 (administrative mandate), you may ask for a transcript of the administrative proceedings at the expense of the administrative body.

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):          TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
<b>APPLICATION FOR WAIVER OF COURT FEES AND COSTS</b>	
CASE NUMBER: _____	

**I request a court order so that I do not have to pay court fees and costs.**

1. a. ☐ I am **not** able to pay any of the court fees and costs.  
 b. ☐ I am able to pay **only** the following court fees and costs (specify):
  
2. My current street or mailing address is (if applicable, include city or town, apartment no., if any, and zip code):
  
3. a. My occupation, employer, and employees address are (specify):  
 b. My spouse's occupation, employer, and employees address are (specify):
  
4. ☐ I am receiving financial assistance under one or more of the following programs:
  - a. ☐ **SSI and SSP:** Supplemental Security Income and State Supplemental Payments Programs
  - b. ☐ **CalWORKs:** California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families (formerly AFDC)
  - c. ☐ **Food Stamps:** The Food Stamp Program
  - d. ☐ **County Relief, General Relief (G.R.), or General Assistance (G.A.)**
5. If you checked box 4, you must check and complete one of the three boxes below, unless you are a defendant in an unlawful detainer action. Do not check more than one box.
  - a. ☐ (Optional) My Medi-Cal number is (specify):
  - b. ☐ (Optional) My social security number is (specify):  

-   -     and my date of birth is (specify):

**[Federal law does not require that you give your social security number. However, if you don't give your social security number, you must check box c and attach documents to verify the benefits checked in item 4.]**
  - c. ☐ I am attaching documents to verify receipt of the benefits checked in item 4, if requested by the court.  

**[See Form FW-001-INFO, Information Sheet on Waiver of Court Fees and Costs, available from the clerk's office, for a list of acceptable documents.]**

**[If you checked box 4 above, skip items 6 and 7, and sign at the bottom of this side.]**

6. ☐ My total gross monthly household income is less than the amount shown on the *Information Sheet on Waiver of Court Fees and Costs* available from the clerk's office.

**[if you checked box 6 above, skip item 7, complete items 8, 9a, 9d, 9f, and 9g on the back of this form, and sign at the bottom of this side.]**

7. ☐ My income is not enough to pay for the common necessities of life for me and the people in my family whom I support and also pay court fees and costs. **[If you check this box, you must complete the back of this form.]**

**WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.**

I declare under penalty of perjury under the laws of the State of California that the information on both sides of this form and all attachments are true and correct.

Date: \_\_\_\_\_



\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(Financial information on reverse)

\_\_\_\_\_  
(SIGNATURE)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

**FINANCIAL INFORMATION**

8. ☐ My pay changes considerably from month to month. **[If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.]**

**9. MY MONTHLY INCOME**

a. My gross monthly pay is: \_\_\_\_\_ \$ \_\_\_\_\_

b. **My payroll deductions are (specify purpose and amount):**

(1) \_\_\_\_\_ \$ \_\_\_\_\_  
 (2) \_\_\_\_\_ \$ \_\_\_\_\_  
 (3) \_\_\_\_\_ \$ \_\_\_\_\_  
 (4) \_\_\_\_\_ \$ \_\_\_\_\_

My TOTAL payroll deduction amount is: \_\_\_\_\_ \$ \_\_\_\_\_

c. My monthly take-home pay is  
 (a. minus b.): \_\_\_\_\_ \$ \_\_\_\_\_

d. Other money I get each month is (specify **source and amount**; include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings):

(1) \_\_\_\_\_ \$ \_\_\_\_\_  
 (2) \_\_\_\_\_ \$ \_\_\_\_\_  
 (3) \_\_\_\_\_ \$ \_\_\_\_\_  
 (4) \_\_\_\_\_ \$ \_\_\_\_\_

The TOTAL amount of other money is: \_\_\_\_\_ \$ \_\_\_\_\_  
 (If more space is needed, attach page labeled Attachment 9d.)

**e. MY TOTAL MONTHLY INCOME IS**

(c. plus d.): \_\_\_\_\_ \$ \_\_\_\_\_

f. Number of persons living in my home: \_\_\_\_\_  
 Below list all the persons living in your home, including your spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:

Name	Age	Relationship	Gross Monthly Income
(1) _____	_____	_____	\$ _____
(2) _____	_____	_____	\$ _____
(3) _____	_____	_____	\$ _____
(4) _____	_____	_____	\$ _____
(5) _____	_____	_____	\$ _____

The TOTAL amount of other money is: \_\_\_\_\_ \$ \_\_\_\_\_  
 (If more space is needed, attach page labeled Attachment 9f.)

**g. MY TOTAL GROSS MONTHLY HOUSEHOLD INCOME IS**

(a. plus d. plus f): \_\_\_\_\_ \$ \_\_\_\_\_

**10. I own or have an interest in the following property:**

a. Cash \_\_\_\_\_ \$ \_\_\_\_\_

b. Checking, savings, and credit union accounts (list banks):

(1) \_\_\_\_\_ \$ \_\_\_\_\_  
 (2) \_\_\_\_\_ \$ \_\_\_\_\_  
 (3) \_\_\_\_\_ \$ \_\_\_\_\_  
 (4) \_\_\_\_\_ \$ \_\_\_\_\_

10. c. Cars, other vehicles, and boats (list make, year, fair market value (FMV), and loan balance of each):

Property	FMV	Loan Balance
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____
(3) _____	\$ _____	\$ _____

- d. Real estate (list address, estimated fair market value (FMV), and loan balance of each property):

Property	FMV	Loan Balance
(1) _____	\$ _____	\$ _____
(2) _____	\$ _____	\$ _____
(3) _____	\$ _____	\$ _____

- e. Other personal property — jewelry, furniture, furs, stocks, bonds, etc. (list separately):

\$ \_\_\_\_\_

**11. My monthly expenses not already listed in item 9b above are the following:**

a. Rent or house payment & maintenance \$ \_\_\_\_\_  
 b. Food and household supplies \_\_\_\_\_ \$ \_\_\_\_\_  
 c. Utilities and telephone \_\_\_\_\_ \$ \_\_\_\_\_  
 d. Clothing \_\_\_\_\_ \$ \_\_\_\_\_  
 e. Laundry and cleaning \_\_\_\_\_ \$ \_\_\_\_\_  
 f. Medical and dental payments \_\_\_\_\_ \$ \_\_\_\_\_  
 g. Insurance (life, health, accident, etc.) \$ \_\_\_\_\_  
 h. School, child care \_\_\_\_\_ \$ \_\_\_\_\_  
 i. Child, spousal support (prior marriage) \$ \_\_\_\_\_  
 j. Transportation and auto expenses (insurance, gas, repair) \_\_\_\_\_ \$ \_\_\_\_\_  
 k. Installment payments (specify **purpose and amount**):

(1) \_\_\_\_\_ \$ \_\_\_\_\_  
 (2) \_\_\_\_\_ \$ \_\_\_\_\_  
 (3) \_\_\_\_\_ \$ \_\_\_\_\_

The TOTAL amount of monthly installment payments is: \_\_\_\_\_ \$ \_\_\_\_\_

- l. Amounts deducted due to wage assignments and earnings withholding orders: \_\_\_\_\_ \$ \_\_\_\_\_

- m. Other expenses (specify):

(1) \_\_\_\_\_ \$ \_\_\_\_\_  
 (2) \_\_\_\_\_ \$ \_\_\_\_\_  
 (3) \_\_\_\_\_ \$ \_\_\_\_\_  
 (4) \_\_\_\_\_ \$ \_\_\_\_\_  
 (5) \_\_\_\_\_ \$ \_\_\_\_\_

The TOTAL amount of other monthly expenses is: \_\_\_\_\_ \$ \_\_\_\_\_

**n. MY TOTAL MONTHLY EXPENSES ARE**

(add a. through m.): \_\_\_\_\_ \$ \_\_\_\_\_

12. Other facts that support this application are (describe unusual medical needs, expenses for recent family emergencies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12):

**WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.**

# Sample Form E

## ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS - INSTRUCTIONS

This form is the order from the court either granting or denying your request to waive fees. The court fills out most of this form. The only parts you will fill out are the caption and entries 1-3. **[Note: The Court of Appeal can only waive the Court of Appeal filing fee of \$655.00.]** Submit this form to the court along with your Application for Waiver of Court Fees and Costs.

The form is also available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>. Select "General Legal" forms, then click on Form FW-003.

### Filling out the Order on Application for Waiver of Court Fees and Costs form:

#### Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the next box down, specify the Superior Court, address, and branch name of the court that made the order or judgment you are appealing.
- (3) In the next box down marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the Superior Court case caption.
- (4) In the "CASE NUMBER:" box immediately to the right of the preprinted caption "ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS", write the Superior Court case number for your case, and the Court of Appeal number if you have one.

#### Entries 1-3

Entry 1. Indicate the date that your Application for Waiver of Court Fees and Costs was filed with the court. Check the box if there was a previous fee waiver order, and indicate the date it was issued.

Entry 2. Print your name.

Entry 3. Check the box next to entry 3 and the box indicating the application is granted "in whole." If you cannot afford to pay any court fees and costs, check box 3a. Otherwise, check box 3b and indicate what fees and costs you are asking to have waived. If you are asking that the reporter's transcript fees be waived, check box (9) "Other" and write in "Reporter's transcript fees". [Please note: Number (7) "Reporter's Fees (valid for 60 days)" covers only that portion of the fees for taking the notes in the courtroom. This will not get you a waiver of the reporter's transcript fees.]

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):   <div style="display: flex; justify-content: space-between;"> <div>TELEPHONE NO.:</div> <div>FAX NO.:</div> </div> E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	
<b>ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS</b>	

1. The application was filed on (date): ☐ A previous order was issued on (date):
2. The application was filed by (name):
3. ☐ IT IS ORDERED that the application is **granted** ☐ in whole ☐ in part (complete item 4 below).
  - a. ☐ **No payments.** Payment of all the fees and costs listed in California Rules of Court, rule 3.61, is **waived**.
  - b. ☐ **The applicant shall pay** all the fees and costs listed in California Rules of Court, rule 3.61, EXCEPT the following:
 

(1) <input type="checkbox"/> Filing papers.	(6) <input type="checkbox"/> Sheriff and marshal fees.
(2) <input type="checkbox"/> Certification and copying.	(7) <input type="checkbox"/> Reporter's fees* (valid for 60 days).
(3) <input type="checkbox"/> Issuing process and certification.	(8) <input type="checkbox"/> Telephone appearance (Gov. Code, § 68070.1 (c)).
(4) <input type="checkbox"/> Transmittal of papers.	(9) <input type="checkbox"/> Other (specify code section):
(5) <input type="checkbox"/> Court-appointed interpreter.	

Reporter's fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
  - c. **Method of payment.** The applicant shall pay all the fees and costs when charged, EXCEPT as follows:  
 (1) ☐ Pay (specify): \_\_\_\_\_ percent. (2) ☐ Pay: \$ \_\_\_\_\_ per month or more until the balance is paid.
  - d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. ☐ The applicant is ordered to appear in this court as follows for review of his or her financial status:  

Date:	Time:	Dept.:	Div.:	Room:
-------	-------	--------	-------	-------
  - e. ☐ The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.
  - f. **All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.**
4. ☐ IT IS ORDERED that the application is **denied** ☐ in whole ☐ in part for the following reasons (see Cal. Rules of Court, rules 3.50–3.63):
  - a. ☐ Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form FW-001-INFO).
  - b. ☐ Other (Complete line 4b on page 2).
  - c. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.
  - d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.
5. ☐ IT IS ORDERED that a **hearing** be held.
  - a. The substantial evidentiary conflict to be resolved by the hearing is (specify):
  - b. The applicant should appear in this court at the following hearing to help resolve the conflict:  

Date:	Time:	Dept.:	Div.:	Room:
-------	-------	--------	-------	-------
  - c. The address of the court is (specify):  
☐ Same as above
  - d. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

**NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.**

**WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.**

Date: ☐ \_\_\_\_\_, Clerk, by \_\_\_\_\_, Deputy

JUDICIAL OFFICER

(Clerk may GRANT in full a nondiscretionary fee waiver; see Cal. Rule of Court, rules 3.56.)

Page 1 of 2

PLAINTIFF/PETITIONER (Name): _____	CASE NUMBER:
DEFENDANT/RESPONDENT (Name):	

4b ☐ Application is denied in whole or in part (*specify reasons*):

### CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at  
(place): \_\_\_\_\_, California,  
on (date): \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy


(SEAL)

### CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date:

Clerk, by \_\_\_\_\_, Deputy



# Sample Form F

## NOTICE DESIGNATING RECORD ON APPEAL - INSTRUCTIONS

After filing your notice of appeal you have 10 days to tell the Superior Court what you want in the record that will be sent to the Court of Appeal; this is called the Notice Designating Record on Appeal. On the next few pages is a form to assist you in designating the record. What you choose to include in your record depends on the issues you wish to raise on appeal. This notice is filed in the Superior Court.

The Notice Designating Record on Appeal is available online in Adobe Acrobat PDF format and may be filled out electronically for free at <http://www.courtinfo.ca.gov/cgi-bin/forms.cgi>. Select "Appellate" forms, then click on Form APP-003.

### Filling out the Notice Designating Record on Appeal:

#### Caption

- (1) In the "Attorney or Party Without Attorney" area at the top of the form, fill out your name, mailing address, and telephone number where you can be reached during the day.
- (2) In the "Superior Court of California, County of" area of the form, specify the county, address, and branch name of the superior court that made the order or judgment you are appealing.
- (3) In the next box on the form marked "PLAINTIFF/PETITIONER" and "DEFENDANT/RESPONDENT" fill out the plaintiff's name and defendant's name as they appear in the superior court case caption.
- (4) In the "Superior Court Case Number" box to the right, write the superior court case number.
- (5) In the "RE: Appeal filed on (*date*)" box, write the date the Notice of Appeal was filed.
- (6) In the "Court of Appeal Case Number (*if known*)" box immediately to the right, write the Court of Appeal case number, if you have it.
- (7) Specify the name of the county after the entry "TO: Clerk of the Superior Court of California County of (*name of county*)"
- (8) After the line marked "NOTICE IS HEREBY GIVEN", check the appropriate box to indicate whether you are the appellant (the appealing party) or respondent (the responding party).

#### Page 1, Entries 1-4

Check only one of the four boxes in entries 1-4.

# Sample Form F

Check box "1" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you don't want a reporter's transcript. If you check this box, there is no need to fill out pages two or three. Date and sign the bottom of this form and you are done.

Check box "2" if you plan to prepare your own transcript (appendix) under California Rules of Court, rule 8.124 instead of having the Superior Court prepare a clerk's transcript and you also want a reporter's transcript. If you check this box be sure to fill out the reporter's transcript section on page three; you do not have to fill out page two.

Check box "3" if you want the Superior Court to prepare a clerk's transcript but you don't want a reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two; you do not have to fill out page three.

Check box "4" if you want the Superior Court to prepare both the clerk's transcript and the reporter's transcript. If you check this box be sure to fill out the clerk's transcript section on page two and the reporter's transcript section on page three.

At the bottom of page 1, write the current date on the form, type or print your name legibly, and sign the form.

## **Page Two (Notice Designating Clerk's Transcript):**

Fill out this page only if you checked box "3" or "4" on page one; if you checked box "1" or "2" you do not need to fill out this page. The first seven documents are filled in for you. You may designate anything that was in the Superior Court file as part of your record on appeal, choosing as few or as many documents as you wish. What you choose to include in your record depends on the issues you wish to raise on appeal. You will need to make a \$100.00 deposit with the Superior Court if you select this option.

## **Page Three (Notice Designating Reporter's Transcript):**

Fill out this page only if you checked box "2" or "4" on page one; if you checked box "1" or "3" you do not need to fill out this page. A reporter's transcript is a word for word typewritten record of everything that was said in court during a trial or hearing. For each day you want transcribed, write the reporter's name, the department of the Superior Court you were in, the date and the nature of the proceeding. The reporter's transcript costs money. You can ask the reporter to give you an estimate of what it will cost in advance or you can pay \$650 per day for days where there were more than three hours to be transcribed or \$350 per day where there were less than three hours to be transcribed.

# Sample Form F

## Page Four (Proof of Service)

Have someone over the age of 18 who is not a party to the action serve the Notice Designating Record on Appeal and fill out the Proof of Service on page 4 of the form. See instructions accompanying [Sample Form C](#).

**Due:** 10 days after filing Notice of Appeal

**File:** Original with Superior Court  
(Bring an extra copy to be file-stamped  
for your file.)

**Serve:** Court Reporter (if reporter's transcript requested)  
All counsel  
All self-represented parties

**Notice: Please read *Information on Appeal Procedures for Unlimited Civil Cases* (Judicial Council form APP-001) before completing this form. This form must be filed in the superior court, not in the Court of Appeal.**

NOTICE IS HEREBY GIVEN that (name):

The ☐ Appellant ☐ Respondent in the above case elects to proceed with the following record on appeal:

**(check only one)**

1. ☐ (Appendix Only; no Reporter's Transcript)
  - a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.  
AND
  - b. elects to have no reporter's transcript. *(Date and sign only.)*
2. ☐ (Appendix and Reporter's Transcript)
  - a. elects under rule 8.124 of the California Rules of Court to prepare own transcript in lieu of a court-prepared clerk's transcript.  
AND
  - b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*
3. ☐ (Clerk's Transcript Only; no Reporter's Transcript)
  - a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2.)*  
AND
  - b. elects to have no reporter's transcript.
4. ☐ (Clerk's and Reporter's Transcripts)
  - a. elects under rule 8.120 of the California Rules of Court to proceed with a clerk's transcript as designated on page 2. *(Fill out the clerk's transcript section on page 2*  
AND
  - b. elects a reporter's transcript as designated on page 3. *(Fill out the reporter's transcript section on page 3.)*

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER:
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**NOTICE DESIGNATING CLERK'S TRANSCRIPT**

(Cal. Rules of Court, rule 8.120)

- A. It is requested that the following documents in the superior court file be included in the clerk's transcript (*give the specific title of each document, an accurate description, and the date of filing*):

Document Title and DescriptionDate of Filing

(NOTE: Items 1–7 are required to be a part of the clerk's transcript and will automatically be included.)

1. Notice of appeal
2. Notice designating record on appeal (*this document*)
3. Judgment or order appealed from
4. Notice of entry of judgment (*if any*)
5. Notice of intention to move for new trial or motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration of an appealed order (*if any*)
6. Ruling on item 5
7. Register of actions (*if any*)
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.

- B. It is requested that the following EXHIBITS admitted into evidence or marked for identification be copied into clerk's transcript on appeal (*check only one box*):

1. ☐ All Exhibits
2. ☐ Specific Exhibits (*give the exhibit number [for example, Plaintiff's #1, Defendant's B, Respondent's A], a brief description, and admission status.*):

☐ See additional pages.

CASE NAME:

CASE NUMBER:

**NOTICE DESIGNATING REPORTER'S TRANSCRIPT**  
(Cal. Rules of Court, rule 8.130)

Reporter's NameDept.DateNature of Proceedings

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

16.

17.

18.

19.

☐

See additional pages.



CASE NAME:	CASE NUMBER:
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NOTICE TO PARTIES: A copy of this document must be mailed or personally delivered to the other party or parties to this appeal. A PARTY TO THE APPEAL MAY NOT PERFORM THE MAILING OR DELIVERY HIMSELF OR HERSELF. A person who is at least 18 years old and is not a party to this appeal must complete the information below and mail (by first-class mail, postage prepaid) or personally deliver the front and back of this document. When the front and back of this document have been completed and a copy mailed or personally delivered, the original may then be filed with the court.

### PROOF OF SERVICE

☐ Mail ☐ Personal Service

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence or business address is (*specify*):
3. I mailed or personally delivered a copy of the *Notice Designating Record on Appeal (Unlimited Civil Case)* as follows (*complete either a or b*):
  - a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred.
    - (1) I enclosed a copy in an envelope **and**
      - (a) ☐ **deposited** the sealed envelope with the United States Postal Service, with the postage fully prepaid.
      - (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
    - (2) The envelope was addressed and mailed as follows:
      - (a) Name of person served:
      - (b) Address on envelope:
      - (c) Date of mailing:
      - (d) Place of mailing (*city and state*):
  - b. ☐ **Personal delivery.** I personally delivered a copy as follows:
    - (1) Name of person served:
    - (2) Address where delivered:
    - (3) Date delivered:
    - (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

# Sample Form G

## COVER FOR RULE 8.124 APPENDIX (APPELLANT'S OR RESPONDENT'S)

No. [Appellate number]

### IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION [Appropriate division]

[Name of Plaintiff from Superior Court case title  
and that party's appellate designation],

Plaintiff and [Appellant or Respondent],

v.

[Name of Defendant from Superior Court case  
title and that party's appellate designation],

Defendant and [Appellant or Respondent].

Court of Appeal

No. [Appellate number]

(Superior Court No. [Number from  
Superior Court case] )

---

Appeal From a Judgment of  
The Superior Court of California, County of [Insert county]  
The Honorable [Name of Superior Court Judge], Judge

---

#### APPELLANT'S (or RESPONDENT'S) APPENDIX IN LIEU OF CLERK'S TRANSCRIPT

---

[Names and addresses  
of counsel for other parties  
and of self-represented parties]

Your Name  
Your Address  
Your Phone Number During the Day  
Self-represented

# Sample Form H

## CHRONOLOGICAL INDEX FOR RULE 8.124 APPENDIX

### Chronological Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Minute Order	2/15/01	07
Motion for Summary Judgment	4/15/01	08
Separate Statement of Undisputed Facts	4/15/01	20
Opposition to Motion for Summary Judgment	4/28/01	35
Minute Order Denying Summary Judgment	5/15/01	42
Judgment Appealed From	5/30/01	43
Notice of Entry of Judgment	6/02/01	44
Notice of Appeal	6/30/01	45

# Sample Form I

## ALPHABETICAL INDEX FOR RULE 8.124 APPENDIX

### Alphabetical Index

ENTRY	DATE	PAGE
Complaint	1/01/01	01
Judgment Appealed From	5/30/01	43
Minute Order	2/15/01	07
Minute Order Denying Summary Judgment	5/15/01	42
Motion for Summary Judgment	4/15/01	08
Notice of Appeal	6/30/01	45
Notice of Entry of Judgment	6/02/01	44
Opposition to Motion for Summary Judgment	4/28/01	35
Separate Statement of Undisputed Facts	4/15/01	20

# Sample Form K

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION [Insert division#]

THE THREE BEARS,

Plaintiffs and Respondents,

v.

GOLDILOCKS,

Defendant and Appellant.

Court of Appeal No. \_\_\_\_\_

(Super. Ct. No. \_\_\_\_\_)

Appeal From a Judgment **[or Order]**  
Of The Superior Court, County of \_\_\_\_\_  
Hon. \_\_\_\_\_, Judge  
**[Superior Court Judge]**

APPELLANT'S OPENING BRIEF

**Your name**  
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**Appellant [or Respondent]**  
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## STATEMENT OF THE CASE

The Three Bears filed a complaint in August 2001 alleging Goldilocks had trespassed on their property by entering their home when they were not at home, consuming a meal and falling asleep in a bed. The complaint alleged that Baby Bear had suffered physical and mental damages as a result of being frightened upon discovering Goldilocks. (CT 1-4.) After a civil trial on the matter over a period of two days, the court found that Goldilocks had committed trespass. (CT 25.) The court entered a final judgment in favor of the Three Bears in the amount of \$50,000. (CT 27.)

## STATEMENT OF APPEALABILITY

This appeal is from the judgment of the San Diego County Superior Court and is authorized by the Code of Civil Procedure, section 904.1, subdivision (a)(1).

## STATEMENT OF FACTS

Papa Bear lives in Los Angeles, California with his wife, Mama Bear and son, Baby Bear. (RT 1.) Appellant Goldilocks lives a few miles away on the other side of the forest. (RT 25.) The Bears' neighbor, Gloria Gardner, watched what happened from her garden next door. (RT 15.)

Gardner testified she saw the Bear family leave their house without shutting the front door about 8:00 a.m. and saw Goldilocks enter the house at about 8:30. At about 9:30 a.m. she heard screams and saw Goldilocks run from the Bears' house. (RT 17.)

The Bears testified that when they returned from the walk, they saw they had left the front door open. (RT 3.) Food was missing from the dining room table. (RT 4.) Baby Bear found Goldilocks asleep in his bed. (RT 6.) Terrified, Baby Bear screamed and woke up Goldilocks. (RT 9.) Startled and confused, Goldilocks ran from the Bears' house. (RT 30.)

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An expert bear cub psychologist, Dr. Dramatic, who has done extensive research in the phobias of young bears, testified to the traumatic effects when a bear cub comes in contact with a human child. Baby Bear had physical symptoms of blackouts stemming from his encounter with Goldilocks as well as mental anguish requiring therapy. (RT 21-24.)

Goldilocks testified she was looking for a boarding facility to take a rest, the Bears' house was very large, there was no fence to indicate this was private property, the door of the house was left open and there was a mat at the front door that said "WELCOME". (RT 25-26.) She thought this was a commercial boarding establishment, as large amounts of food were set out as if for guests; she looked for someone to ask about spending the night and saw several sets of chairs and beds all in different sizes. (RT 27-28.) She sat down on a bed and fell asleep. (RT 29.)

## ARGUMENT

### I. GOLDSILLOCKS WAS GIVEN IMPLIED CONSENT TO ENTER THE HOUSE AND THUS HER ENTRY WAS NOT "WRONGFUL"

A. The Standard of Review. The trial court erred in finding that Goldilocks trespassed on the Bears' property as there is no substantial evidence to support that finding. On review, the appellate court looks to the record to see if there are facts to support the trial court or jury's findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (*Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 132.)

B. The Elements of the Action. A trespass occurs when a person intentionally, recklessly or negligently enters land in the possession of another. (*Gallin v. Poulou* (1956) 140 Cal.App.2d 638, 645.) The intent to enter is the only intent needed. (*Miller v. National*

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*Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1480.) However, consent or permission to enter upon the property is a defense. (*Williams v. General Elec. Credit Corp.* (1946) 159 Cal.App.2d 527, 532; 5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706; Rest.2d Torts, § 167.)

C. No Evidence of Wrongful Entry. Here, Goldilocks did not intend to enter on private property. She thought the Bears' house was a public, commercial boarding house. Although her actual intent is not a legal defense, her actual intent reinforces her argument that she had consent to enter the building. The door was open, the WELCOME mat was out, the food was on the table, and there were many beds and chairs about. All of this points to the conclusion the Bears were prepared for and awaiting the arrival of numerous persons and supports Goldilocks' belief this was a boarding house and there was no reason for her not to enter. At a minimum the house was prepared and open for an "open house". No evidence points to any indication the house was closed, off-limits to outsiders, or limited in the types of persons who would be admitted. There is no evidence to support a finding Goldilocks' entry was wrongful. The judgment must be reversed.

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## CONCLUSION

Goldilocks submits the Three Bears have failed to meet their burden of proving that her entry into their house was wrongful and, thus, a trespass. All of the evidence supports a finding that the Bears by their conduct consented to Goldilocks' entry. Goldilocks respectfully asks that this Court reverse the decision of the trial court and vacate the award of damages.

Respectfully submitted,

DATED:

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Your name-printed or typed)

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## CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains \_\_\_\_\_ words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By \_\_\_\_\_  
(Your Signature)

**An original Proof of Service must be attached to every original document filed with the court. A copy of the Proof of Service must be attached to every document served on all counsel and self-represented parties. (See [Sample Form C.](#))**

## CITING YOUR SOURCES OF INFORMATION

Every statement of law in your brief must be supported by a citation to a case, statute, rule, constitutional provision, treatise, law review article or other source that supports the statement you are making. The citation is usually contained in parentheses at the end of the sentence. (See [Sample Form K](#).) For example, your brief might state: "The elements of a cause of action for negligence are: duty, breach of duty, legal cause, and damages. (*Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463.)"

The California Style Manual is the manual followed by California courts for citation form. You can find the California Style Manual in any law library. However, if you follow the general guidelines in this Appendix, you will probably not need to consult the California Style Manual. The court is mainly interested in finding out where you got the information you have included in the brief. Your brief will be accepted as long as the citations are clear enough to identify your reference sources.

Here are some simple guidelines for proper citation form:

### CASES:

You should include the name of the case you are citing, the year it was decided, the volume and page number of the official reporter where the case appears, and the page number in the case that specifically supports the proposition of law you are stating. For example, a California Supreme Court case would be cited as follows: *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1351. The "30 Cal.4th" refers to volume 30 of the fourth series of Official California Reports, which is the official reporter for California Supreme Court opinions. The "1342" refers to the page in volume 30 where the case starts. The "1351" is the page number of the case you are referring to in your brief. Similarly, a California Court of Appeal case would be cited as follows: *Albertson's, Inc. v. Young* (2003) 107 Cal.App.4th 106, 113. The "107 Cal.App.4th" refers to volume 107 of the fourth series of Official California Appellate Reports, which is the official reporter for California Court of Appeal opinions.

Federal court citations follow the same general format. United States Supreme Court cases can be found in three separate reporters: the United States Supreme Court Reporter (abbreviated U.S.), the Supreme Court Reporter (abbreviated S.Ct.), or the Lawyer's Edition Reporter (abbreviated L.Ed.). You may cite to any of these reporters. For example: *Montana v.*

*United States* (1981) 450 U.S. 544, 551. For other federal courts, your citation should identify which federal circuit or district court decided the case. Federal circuit court cases are cited as follows: *Clicks Billiards, Inc. v. Sixshooters, Inc.* (9th Cir. 2001) 251 F.3d 1252, 1257. "9th Cir." indicates that the case was decided by the Ninth Circuit Court of Appeals, and "F.3d" refers to the third series of the Federal Reporter. Federal district court cases are cited as follows: *Plute v. Roadway Package System, Inc.* (N.D. Cal. 2001) 141 F.Supp.2d 1005, 1010. "N.D.Cal." indicates that the case was decided by the United States District Court for the Northern District of California, and "F.Supp.2d" refers to the second series of the Federal Supplement Reporter.

For cases from other states, you will need to cite to the National Reporter System regional reporter or the state's official reporter. Identify which state court decided the case in your citation. Here is an example: *In re Gatti* (Ore. 2000) 8 P.3d 966, 972-973. "P.3d" refers to the third series of the Pacific regional reporter. Here is another example: *Fischer v. Governor* (N.H. 2000) 749 A.2d 321, 326. "A.2d" refers to the second series of the Atlantic regional reporter.

### **STATUTES:**

For a California statute, give the name of the code and the section number. For example, "Code of Civil Procedure, section 1011" or "Family Code, section 3461." For a federal statute, cite to the United States Code (abbreviated U.S.C.). For example, "28 U.S.C. section 351."

### **RULES:**

For rules, identify the body of rules you are citing and the specific rule number. For example, "Cal. Rules of Professional Conduct, rule 3-500" or "Cal. Rules of Court, rule 8.220(a)."

### **CONSTITUTIONS:**

For constitutions, identify whether you are referring to California or United States Constitution and refer to the specific constitutional provision you are relying on. For example, "California Constitution, article IX, section 2" or "United States Constitution, Fourteenth Amendment."

### **TREATISES:**

For legal treatises, you should indicate the volume number of the treatise you are citing (if it has more than one volume), the author of the treatise, the title, edition and year, and the section and page number that



supports the proposition of law you are stating. For example, "5 Witkin, Summary of California Law (9th ed. 1988) Torts, § 607, p. 706." This is a citation to volume 5 of a treatise by author Witkin entitled Summary of California Law, and the specific portion of the treatise cited is section 607 of the Torts chapter on page 706.

### **LAW REVIEWS AND JOURNALS:**

For law review or journal articles, you should identify the author, title of the article, year it was printed, name of the law review or journal, volume and page number, and the specific page number of the article you are citing to. For example: Volokh, *The Mechanics of the Slippery Slope* (2003) 116 Harv. L.Rev. 1026, 1033. The abbreviation "Harv. L.Rev." stands for Harvard Law Review, and this article appears in volume 116 of the Harvard Law Review at page 1026. If you do not know the proper abbreviation, you may spell out the entire journal name in your citation.

### **OTHER SOURCES:**

If you are citing any other source, do your best to identify the source as accurately as possible, so that someone reading your brief could easily find it and look it up. As a general rule, you should identify the author, title, year, volume,

## PREPARING AN APPENDIX

Make copies of the documents that are related to the appeal. You cannot include any documents that were not part of the superior court proceedings. Photocopy on one side only, on recycled paper.

The appendix must include the following items:

- A chronological index of all of the items in the appendix ([Sample Form H](#)).
- An alphabetical index of all of the items in the appendix ([Sample Form I](#)).
- All documents necessary for the consideration of issues in the appeal.
- The judgment or order being appealed and any notice of its entry, any notice of intention to move for a new trial; any motion to vacate the judgment, for judgment notwithstanding the verdict, or for reconsideration and the rulings thereon; and any order on such motion and any notice of its entry.
- The *Notice of Appeal*
- The notice to prepare the clerk's and reporter's transcripts, or the settled statement, or *Notice Designating Record on Appeal* form
- Any notice of election to proceed by an appendix under CRC rule 8.124 and, for a joint appendix, the stipulation designating its contents
- Any stipulation to proceed by agreed statement under CRC rule 8.134, along with the agreed statement; and any settled statement approved by the court under CRC rule 8.137.

Arrange the documents in the order in which they were filed in the superior court (chronologically), and number the pages one after the other, beginning with page 1.

Make a chronological index of all documents by listing them in the order filed, with the first page number for each document and, if there is more than one volume, the volume number. ([Sample Form H](#).)

Make an alphabetical index of all the documents by listing them in alphabetical order, with the first page number of each document and, if there is more than one volume, the volume number. ([Sample Form I](#).)

Prepare a cover ([Sample Form G](#)). The cover should state the case title and superior court case number, the Court of Appeal number, the name of each of the participating Superior court judges, the names and addresses of appellate counsel for each party or any self-represented party, the volume number, and the inclusive page numbers (for example, 1-246) of that volume.

The cover should be the appropriate color:

Appellant's Appendix – Green

Respondent's Appendix – Yellow

Appellant's Reply Appendix - Tan

Joint Appendix – Cream (CRC rules 8.124(c), 8.144(a), (b), (c).)

Put the materials together: cover, chronological index, alphabetical index, and documents in chronological order.

Make the necessary number of copies (one for each party, the original for the court, and one for yourself), and bind the original and each of the copies into transcript (book) form. The appendix should be bound on the left side, in volumes of 300 pages or less. (CRC rules 8.124(c), 8.144(c)(1).) The appendix may not be bound with the brief.